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JOHN F. DAVIS, CLERK

No. 1034

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

PRESTON P. COLEMAN, CIRCUIT CLERK AND REGISTRAR OF LAUDERDALE COUNTY, MISSISSIPPI, ET AL.,
Petitioners,

vs.

ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Preston P. Coleman, Circuit Clerk and Registrar of Lauderdale County, Mississippi; L. F. Campbell, Circuit Clerk and Registrar of Madison County, Mississippi, and H. T. Ashford, Jr., Circuit Clerk and Registrar of Hinds County, Mississippi, hereinafter referred to as "Petitioners", pray that a Writ of Certiorari issue to review the judgment and order of the United States Court of Appeals for the Fifth Circuit hereinafter set out in Section B of this Petition.

A.

OPINIONS BELOW

The Opinion of the United States District Court for the Southern District of Mississippi rendered in this cause is reported at 208 F. Supp. 199. The Opinion rendered in this cause by the United States Court of Appeals for the Fifth Circuit has not yet been reported. A true and correct copy of these Opinions is attached hereto as an Appendix (A6 and A11).

B.

JURISDICTIONAL GROUNDS

The judgment of the United States Court of Appeals for the Fifth Circuit here sought to be reviewed was dated and entered on February 13, 1963 (A13).

The order of said Court of Appeals denying the petition for rehearing filed by Petitioners in that Court was dated and entered on March 15, 1963 (A14).

Jurisdiction to review the above mentioned judgment and order of the United States Court of Appeals for the Fifth Circuit is conferred upon this Honorable Court by Title 28, U.S.C., §1254(1) and §2101(c) (A2, A3).

This Honorable Court should grant this Petition for Certiorari for the following reasons:

(1) The Court of Appeals in this cause has decided important questions of Federal law which have not been, but should be, settled by this Court;

(2) The Court of Appeals in this cause has decided Federal questions in a way in conflict with applicable decisions of this Court;

(3) The Court of Appeals in this cause has so far departed from the acceptable and usual course of jurisdictional proceedings or so far sanctioned such a departure by the District Court, as to call for an exercise of this Court's power of supervision.

C.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in failing to hold that the actions of the District Court deprived Petitioners of their rights guaranteed and secured by the Fifth Amendment of the Constitution of the United States?

2. Did the Court of Appeals err in failing to hold that the actions of the District Court deprived Petitioners of their rights guaranteed and secured by the Sixth Amendment of the Constitution of the United States?

3. Did the Court of Appeals err in failing to hold that the Title III proceedings as conducted by the District Court did not constitute a "case or controversy" within the meaning of Article III, Section 2 of the Constitution of the United States?

4. Did the Court of Appeals err in its interpretation of Title III proceedings by holding that Respondent had met the requirements of proving the jurisdiction of the United States District Court as provided by Section 1974d, Title 42, U.S.C.?

5. Did the Court of Appeals err in its interpretation of Title III proceedings by holding that Respondent was entitled to inspect, copy and reproduce documents in the custody of Petitioners, which came in existence prior to May 6, 1960, the effective date of the Civil Rights Act of 1960?

D.

PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES

Because of the length of the provisions involved, their citation alone is set out at this point and pertinent text is set forth in the Appendix, as indicated.

The Constitution of the United States

Article III, § 2, Clause 1 (A1).
Amendment V (A1).
Amendment VI (A1).
Amendment X (A2).

United States Code

Title 18, U.S.C., §242 (A2).
Title 28, U.S.C., §1254(1) (A2).
Title 28, U.S.C., §2101(c) (A3).
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Title 42, U.S.C., §1974c (A4).
Title 42, U.S.C., §1974d (A4).
Title 42, U.S.C., §1974e (A4).

Mississippi Code of 1942, Annotated

§2111 (A5).

E.

STATEMENT OF THE CASE

On June 25, 1962, Robert F. Kennedy as Attorney General of the United States filed in the United States District Court for the Southern District of Mississippi an application for an order to require production of records for inspection, reproduction and copying directed to the Petitioner, L. F. Campbell, Circuit Clerk and Registrar, Madison County, Mississippi (R. 140). Jurisdiction of the District Court was asserted under the provisions of 42 U.S.C., §1974d (Section 305 of Title III of the Civil Rights Act of 1960) (R. 141) (A4). Subsequent to the filing of the application, the Petitioner, L. F. Campbell, filed three motions to dismiss on the grounds of unconstitutionality of Title III of the Civil Rights Act of 1960 and an additional motion to dismiss for failure to state a claim (R. 149-151). On August 1, 1962, the Petitioner, L. F. Campbell, filed an answer to the application in which he denied that during his term of office as said Circuit Clerk and Registrar he had discriminated against any person or made any distinctions on the basis of race or color with respect to registration and voting in Madison County, Mississippi. Further, based on lack of knowledge sufficient to form a belief, Petitioner denied that the Attorney General of the United States had in his possession information tending to show that distinctions or discriminations on the basis of race or color had been made with respect to registration and voting within Petitioner's jurisdiction (R. 152-155). The assertion on the part of the Attorney General of the United States that he had such information in his possession was based on his erroneous interpretation of Title 42, U.S.C., §1974b, which requires that the demand shall contain a statement of the

basis and the purpose therefor. By these denials the Petitioner placed in issue these matters. This answer, *inter alia*, incorporated as other defenses the motions which were filed prior to the filing of the answer (R. 156).

In the *Ashford* (Hinds County) case, the facts were identical to that of the *Madison County* case except for the dates of the filing of the application and the answer which were August 10, 1962 and August 28, 1962, respectively (R. 1, 19).

In the *Coleman* (Lauderdale County) case, the application for order to require production of records for inspection, reproduction and copying was filed on March 15, 1962 (R. 278). Subsequent to the filing of the application, Petitioner, Preston P. Coleman, filed a motion for a more definite statement (R. 296), motion to dismiss because the demand made did not comply with the requirements of Section 301 and 303 of the Civil Rights Act of 1960 (R. 305), motions attacking the constitutionality of Title III of the Civil Rights Act of 1960 (R. 307-308), motion to dismiss for failure to state a claim (R. 308), and an affidavit of the Petitioner, wherein, under oath, he stated that he had afforded all persons regardless of race or color the opportunity to apply for voter registration and that he had applied the voter registration laws of Mississippi equally and impartially without regard to race or color and that he had registered qualified applicants for registration to vote regardless of race or color and that he had denied no person registration to vote because of race or color (R. 311-312). Petitioner further stated in his affidavit that he had administered the voter registration test to all applicants equally and impartially and that as a result of this policy approximately two thousand Negro citizens had been registered to vote in Lauderdale County, Mississippi, since he took office as

Circuit Clerk and Registrar in 1952 (R. 311-312). On May 25, 1962, the District Court overruled Petitioner's motion for a more definite statement (R. 312-314), and on July 11, 1962, Petitioner filed his answer (R. 319-326). This answer raised the identical issues which are presented in the answers filed on behalf of Petitioners Campbell and Ashford.

On September 5, 1962, the United States District Court for the Southern District of Mississippi had a hearing on the application of the Attorney General of the United States to inspect and reproduce records in the possession of the Petitioners (R. 174-274, 345-445), and it was decided by the Court to consolidate the three cases involving the registrars of Hinds, Lauderdale and Madison Counties for the hearing (R. 178, 349).

After having been given an opportunity by the Court to put on evidence, Respondent declined to do so and rested on the pleadings (R. 193, 363).

On September 8, 1962, the District Court rendered its opinion as reported in 208 F. Supp. 199 (R. 157-163, 328-333) (A6). On September 11, 1962, orders were filed by the District Court pursuant to its opinion of September 8, which orders overruled all motions filed on behalf of Petitioners and granted Respondent the right of inspection, copying and reproduction of certain records in the custody of each of Petitioners (R. 163-165, 335-336). On September 14, 1962, each of the Petitioners filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit from the orders of the District Court of September 11, 1962 (R. 38, 169, 336).

On the same day, September 14, 1962, each of Petitioners filed in the District Court a motion for stay of the inspection order pending appeal (R. 36, 166, 338). On

that date, the District Court granted the various motions for stay of the inspection orders, conditioned upon the filing of a supersedeas bond by each Petitioner in the sum of $1,000.00 (R. 37, 168, 339). Each Petitioner promptly filed the supersedeas bond (R. 39, 170, 340).

On November 16, 1962, the United States Court of Appeals for the Fifth Circuit, upon motion of Respondent, Robert F. Kennedy, entered an order vacating the stay order of the District Court (R. 446).

Petitioners, on December 10, 1962, moved the Court of Appeals to stay the execution of its order of November 16, 1962 (R. 462-465).

On January 8, 1963, the Court of Appeals entered an order staying the execution of its order of November 16, 1962, and setting the appeals for a hearing on the merits on January 16, 1963 (R. 466).

On January 16, 1963, the appeals were argued and submitted to the Court (R. 468).

The Court of Appeals, on February 13, 1963, rendered its opinion affirming the judgments of the District Court (R. 469-471) (A11), and on that same date entered a judgment of affirmance (R. 472, A13).

On March 6, 1963, Petitioners filed a petition for rehearing and brief in support thereof in the Court of Appeals (R. 473-504), and on March 15, 1963, the Court of Appeals denied the petition for rehearing (R. 505, A14).

On March 21, 1963, upon application of Petitioners, Honorable Richard T. Rives, a Judge of the United States Court of Appeals for the Fifth Circuit, and a member of the panel that decided these cases in that Court, entered an order staying the execution and enforcement of the inspection orders of September 11, 1962, of the District Court,

and also staying the execution and enforcement of the judgment and mandate of the Court of Appeals of February 13, 1963, for a period of 30 days to enable Petitioners to file this Petition with this Honorable Court, the stay to continue in force until the final disposition of the case by this Court.

F.

ARGUMENT

I.

The Court Erred in Failing to Hold That the Actions of the District Court Deprived Petitioners of Their Rights Guaranteed and Secured by the Fifth Amendment of the Constitution of the United States.

Petitioners believe that the procedure adopted by the District Court and countenanced by the Court of Appeals manifestly deprives them of their vested constitutional rights of "due process of law."

No more comprehensive and definitive statement of the meaning of "due process" has been made than that of Mr. Justice Frankfurter in his concurring opinion in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 95 L. Ed. 817. We will briefly allude to some of the language of this fine opinion, as follows:

> "The heart of the matter is that democracy implies respect for the elementary rights of men, however suspect or unworthy; a democratic government must therefore practice fairness; and *fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights.*" (341 U.S. 170, 95 L. Ed. 853.)
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> • • •
>
> "Man being what he is cannot safely be trusted with complete immunity from outward responsibilty in de-

> priving others of their rights. At least such is the conviction underlying our Bill of Rights. *That a conclusion satisfies one's private conscience does not attest its reliability. The validity and moral authority of a conclusion largely depend on the mode by which it was reached. Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness.* No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done." (341 U.S. 171-172, 95 L. Ed. 854.)
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> * * *
>
> ". . . *The Attorney General is certainly not immune from the historic requirements of fairness merely because he acts, however conscientiously, in the name of security.* Nor does he obtain immunity on the ground that designation is not an 'adjudication' or a 'regulation' in the conventional use of those terms. Due process is not confined in its scope to the particular forms in which rights have heretofore been found to have been curtailed for want of procedural fairness. Due process is perhaps the most majestic concept in our whole constitutional system. While it contains the garnered wisdom of the past in assuring fundamental justice, it is also a living principle not confined to past instances." (341 U.S. 173-174, 95 L. Ed. 855.)*

The Attorney General of the United States is seeking to do in these Title III proceedings that which Mr. Justice Frankfurter in his opinion in the *McGrath* case, *supra*, has said that no government official can do. Here, the Attorney General asserts his right to make "secret, one-sided

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*Emphasis herein in quotations is supplied unless otherwise noted.

determination of facts decisive of rights," and he further asserts that the Courts of the United States have no right or power to question or challenge his determinations. It should be noted that if the Attorney General is not immune from the requirements of fair play while purporting to act in the highest cause, that of national security, then certainly he is no more immune when purporting to act pursuant to a lesser power conferred by Congress.

In his opinion in the *McGrath* case, *supra*, Mr. Justice Frankfurter realized that the question of what constitutes due process of law varies from case to case, and he undertook to state some of the factors which should be taken into consideration in each case in order to determine whether a person has been afforded due process. At 341 U.S. 163, 95 L. Ed. 849, Mr. Justice Frankfurter states as follows:

> "The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished—these are some of the considerations that must enter into the judicial judgment."

Petitioners believe that from the standpoint of the "due process" question, the facts in the case at bar are analogous to the facts of *McGrath*, *supra*. The *McGrath* case dealt with the legality of the action of the Attorney General of the United States in designating certain groups or organizations as "communist" or "communist front". Such designation of these organizations was made *ex parte* by the Attorney General without the organizations being given an opportunity to know the nature of the information which caused such designation to be made, and without said organizations being given any opportunity to con-

test such designations by the Attorney General. That is what has happened here. Respondent in the court below declined to state what information he possessed tending to show that Petitioners had discriminated against any person in the voting or registration process, and after such failure to furnish this information, was granted full relief by the District Court.

Among the factors above mentioned by Mr. Justice Frankfurter in determining what constitutes due process in a given case are "the available alternatives to the procedure that was followed," and "the balance of hurt complained of and good accomplished." Here, too, Petitioners contend that the balance tips in favor of having the Attorney General in Title III proceedings furnish at least some information in his possession which constitutes the basis of the demand for inspection of records. One reasonable alternative to the procedure that was taken by the Attorney General in these cases would have been for that official to furnish the information to each of the registrars which constituted the basis of the demand for inspection made upon him.

Can it be reasonably said that the injury which would be suffered by the Attorney General of the United States having to disclose to the various registrars of voters the information in his possession which constitutes the basis for his inspection demand would be greater than the injury sustained by the various registrars in not being furnished this information and being deprived of the opportunity and right to dispute and refute the Attorney General's statement of the basis of the demand, and thus being precluded from litigating this disputed issue?

The question provides its own answer. In fact, we may say with Mr. Justice Frankfurter that:

> "Nothing has been presented to the Court to indicate that it will be impractical or prejudicial to a concrete public interest to disclose to organizations the nature of the case against them and to permit them to meet it if they can." (341 U.S. 172-173, 95 L. Ed. 854.)

Neither the case at bar nor the *McGrath* case, *supra*, involved a criminal prosecution. However, the Court in *McGrath* recognized that the labeling of an organization as "communist" or "communist front" would result in serious injury to the organizations and the members thereof. In the case at hand, for agents of the Federal Bureau of Investigation and attorneys for the Department of Justice to inspect, copy and reproduce records in the possession of Petitioners on the stated belief that Petitioners have discriminated against citizens in the voting or registration process on the basis of race or color, and with the announced purpose of determining whether Federal law has been violated, with the widespread publicity attendant upon the inspection process, is to subject the various registrars to the scorn and opprobrium of their fellow citizens, both in their home communities and across the breadth of the land, with consequent harm to their reputations. It has been said that the purpose of Title III proceedings is to investigate, not to adjudicate. It is too much to expect the general public to understand or appreciate this difference, especially in the light of statements such as those given to the press in Jackson, Mississippi, during the inspection and copying of a portion of the records in the custody of the Petitioner, Ashford, by one of the Government officials in charge of the inspection that they would not be in Mr. Ashford's office if they did not think something was wrong. It is only natural for a citizen who hears or reads of the inspection process which takes place under Title III proceedings to conclude that the Government must have the "goods" on the defend-

ant registrar and that the registrar has in fact violated Federal laws.

In at least one respect, Petitioners believe that the case at hand presents an even stronger case for the protection of "due process" than does the *McGrath* case. It is not a crime to be a member of the Communist Party or a communist front organization. If Petitioners are in fact guilty of the conduct which Respondent says is the basis for his demand for inspection, then such conduct would constitute a crime under the statutes of the United States and of the State of Mississippi. See Title 18, U.S.C., Section 242, and Section 2111 of the Mississippi Code Annotated of 1942 (A2, A5).

Taken in conjunction with the statement of the Attorney General as to his purpose in making the demand to inspect the records, which is to determine whether violations of Federal law have occurred, and the publicity given thereto by the communications media at the time the inspection of records occurs, it is only natural that many persons would think and believe that the registrar has, in fact, disobeyed the law. It has been said that, if, after the inspection and reproduction of the records in the custody of the registrar has occurred, it is then determined by the Attorney General of the United States that the registrar has not violated any Federal law or deprived any citizen of his right to register to vote on account of race or color, that no civil or criminal action would be brought against the registrar, and he would not be harmed. It is true that he might not be incarcerated in a Federal penitentiary or have an injunction issued against him, but who is to restore his damaged reputation and standing? Who is going to "wipe the slate clean" for him? It is of common knowledge that this is one of those instances in which the refutation vainly pursues the accusation.

Then there occurs the question of who furnished the Attorney General the information which he says constitutes the basis of his demand for inspection of records. This is information the Attorney General of the United States insists he has a right to keep secret. We could do no better in stating the problems inherent in this kind of proceeding than to quote from the language of Mr. Justice Douglas in the *McGrath* case, *supra*, as follows:

> "The critical evidence may be the word of an unknown witness who is 'a paragon of veracity, a knave, or the village idiot.' His name, his reputation, his prejudices, his animosities, his trustworthiness are unknown both to the judge and to the accused. The accused has no opportunity to show that the witness lied or was prejudiced or venal. Without knowing who her accusers are she has no way of defending." (341 U.S. 180, 95 L. Ed. 858.)

In striking the balance between competing interests in the case at hand in order to determine the requirements of due process as applied to this case, Petitioners say that no weight should be given the fact that one of the parties to the litigation is the Attorney General of the United States, and that he might represent some Governmental interest for, as Mr. Justice Douglas said in his opinion in the *McGrath* case:

> "When the Government becomes the moving party and levels its great powers against the citizen, it should be held to the same standard of fair dealing as we prescribe for other legal contests. To let the Government adopt such lesser ones as suits the convenience of its officers is to start down the totalitarian path." (341 U.S. 177, 95 L. Ed. 857.)

It may be said that the violation of Petitioners' rights of due process of law in this case is not the most flagrant imaginable violation of "due process," and that the pur-

pose to be served by Title III proceedings is a good one, and that this Court should countenance the proceedings below. However, this Court has eloquently answered any such contentions in its opinion in the case of *Boyd* v. *United States*, 116 U.S. 616, 29 L. Ed. 746. In that case, this Court said:

> "It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely: by silent approaches and slight deviations from legal modes of procedure." (116 U.S. 635, 29 L. Ed. 752.)

We submit that the procedure followed by the District Court and approved by the Court of Appeals in granting the order under Title III of the Civil Rights Act of 1960 to inspect, copy, and reproduce records in the custody of each Petitioner does not comport with the requirements of due process under the Fifth Amendment of the Constitution of the United States.

II.

The Court Erred in Failing to Hold That the Actions of the District Court Deprived Petitioners of Their Rights Guaranteed and Secured by the Sixth Amendment of the Constitution of the United States.

It is apparent that Title III of the Civil Rights Act of 1960 is so enmeshed in the criminal processes that any defendant registrar of voters is entitled to the full protection afforded by the Sixth Amendment. See Title 42, U.S.C., Section 1974, Section 1974c, and 18 U.S.C., Section 242 (A3, A4, A2). Title 42, U.S.C., Section 1974c (A4), explicitly provides and contemplates that the records obtained by the Attorney General pursuant to the Title III inspection may be used "in the presentation of

any case or proceeding before any Court or grand jury." There is only one reason to present these records to a grand jury, and that is to initiate criminal proceedings against the registrars.

In contending that the actions of the District Court are violative of the due process clause of the Fifth Amendment, it might be argued that there should be a balancing of the interests in any particular case to determine if the requirements of due process had in fact been met. However, there is no place for a striking of a balance between competing interests in any case where an individual's rights guaranteed to him by the Sixth Amendment to the United States Constitution have been violated. At first blush and without a thorough study of Title III one might well compare its function with that of the Commission on Civil Rights and come to the erroneous conclusion that it is purely investigative and that it does not adjudicate or determine civil or criminal liabilities. Other than having in common the words "civil rights" any other similarity cases to exist.

The inherent evils embodied in this legislation was recognized by Mr. Justice Douglas with whom Mr. Justice Black concurred in the dissenting opinion in *Hannah* v. *Larche*, 363 U.S. 420, 4 L. Ed. 2d 1307, 80 S. Ct. 1502, and we will quote later extensively from this dissenting opinion. While fully realizing we are relying on the language of the dissenting opinion, we state that the cases at bar under Title III are examples of much greater deprivation of rights under the Sixth Amendment than was the complained-of act of the Commission on Civil Rights in *Hannah* v. *Larche*. In that case an action was instituted in the United States District Court for the Western District of Louisiana in which Louisiana voting registrars and private citizens sought to enjoin the Commission on Civil

Rights from conducting a hearing into discriminatory denial of voting rights; this suit also challenged the validity of the Commission's procedural rules, which denied witnesses before it the right to know the nature of the charges being investigated or the identity of the persons filing the charges, and the right to cross-examine witnesses. When the case reached the United States Supreme Court on petition for certiorari the Court held that the Commission's procedural rules were authorized by the Civil Rights Act and did not, in view of the purely investigative nature of the Commission's function, violate the due process clause of the Fifth Amendment.

In the dissent of Justice Douglas and Justice Black it was readily apparent to each that not only did the action of the Civil Rights Commission violate the due process clause of the Fifth Amendment, but likewise violated the provisions of the Sixth Amendment to the *United States Constitution*. Speaking of the right to vote as protected by the Fifteenth Amendment as a civil right of the individual they stated that:

> "Yet important as these civil rights are, it will not do to sacrifice other civil rights in order to protect them. We live and work under a constitution. The temptation of many men of good will is to cut corners, take short cuts, and reach the desired end regardless of the means. Worthy as I think the ends are which the Civil Rights Commission advances in these cases, I think the particular means used are unconstitutional." (362 U.S. 494, 4 L. Ed. 2d 1356, 1357.)

As to the action of the Civil Rights Commission the Court said:

> "Complaints have been filed with the Commission charging respondents, who are registrars of voters in Louisiana, with depriving persons of their voting rights by reason of their color. If these charges are true and

> if the registrar acted wilfully (See Screws v. United States, 325 U.S. 91, 89 L. Ed. 1495, 65 S. Ct. 1031, 162 A.L.R. 1330) the registrars are criminally responsible under a Federal statute which subjects to fine and imprisonment anyone who wilfully deprives a citizen of any right under the Constitution and 'by reason of his color or race.'" (18 *U.S.C.*, Section 242.) (363 U.S. 495, 4 L. Ed. 2d 1357.)

The investigation and hearing by the Commission are therefore necessarily aimed at determining if this criminal law has been violated. When the criminal sanctions contained in Title III itself and those imposed by 18 *U.S.C.*, Section 242, are considered, the frightening aspects of Title III proceedings become apparent. In the demand to examine the records of the defendants the Attorney General states that the purpose of the demand is to ascertain whether or not violations of Federal law in regard to registration and voting have occurred. If as a result of an examination the Attorney General ascertains that Federal laws have been violated, the information could then be turned over to a Federal grand jury for criminal prosecution. What makes the Title III proceedings even more heinous is that since the penal sections are misdemeanors rather than felonies, the information could be turned over to the United States Attorney and he could elect to file a criminal information rather than to present the matter to a grand jury. By this method the Attorney General through the United States Attorney, his representative, could circumvent the grand jury and maintain full control of the criminal prosecution.

Petitioners contend that due to the criminal sanctions available to the Attorney General under Title III of the 1960 Civil Rights Act that they should be informed of the nature and cause of the accusation; be confronted with the witnesses against them and have the right of

cross-examination of these witnesses and all of the other safeguards guaranteed to them under the Sixth Amendment of the *United States Constitution*. The demand to inspect the records in their custody by the Attorney General for the purpose of ascertaining whether or not Federal law has been violated amounts to an accusation against them.

Our contentions were eloquently stated in the dissenting opinion of Mr. Justice Douglas in the *Hannah* v. *Larche* case, *supra*, as follows:

> "We spoke in the tradition of the Morgan Case only recently in Greene v. McElroy, 360 U.S. 474, 496, 497, 3 L. Ed. 2d 1377, 1390, 1391, 79 S. Ct. 1400. 'Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right "to be confronted with the witnesses against him." *This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases . . . but also in all types of cases where administrative and regulatory actions were under scrutiny.*'" (363 U.S. 502-503, 4 L. Ed. 2d 1361.)

From an analysis of the majority opinion in *Hannah* v. *Larche*, it seems clear that the decision in that case

hinged in large measure upon the fact that the Civil Rights Commission could take no steps to abridge or impair any legal rights of the election officials. In discussing the nature of the Civil Rights Commission, the Supreme Court said:

> "It does not issue orders. Nor does it indict, punish, or impose any legal sanctions. It does not make determinations, depriving anyone of his life, liberty, or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive action." (363 U.S. 441, 4 L. Ed. 2d 1321.)

As we have previously noted, the provisions of 42 *U.S.C.*, Section 1974c, explicitly provide that the documents copied or reproduced may be turned over to a grand jury for possible criminal action. This fact makes this case far different from *Hannah* v. *Larche*, and makes a much stronger case for invoking all of the protections of the Sixth Amendment. In these Title III cases, the Attorney General of the United States is seeking to encroach upon and usurp the power of the grand jury which is the only accusatory body known to our jurisprudence which also has powers of investigation.

By way of comparison and analogy and to demonstrate how the Civil Rights Act of 1960, as interpreted and applied, accomplishes by indirection a violation of petitioners' constitutional rights, guaranteed in the Bill of Rights, we have set up in parallel columns the procedures followed under Title III of the Civil Rights Act of 1960 as against the procedures followed in criminal prosecutions as required by the *United States Constitution*.

Criminal Procedure	Civil Rights Act of 1960
1. Procedure before magistrate adjudging probable cause or	1. Information and accusation by letter of the Department of Justice.
2. Information and presentment by grand jury of one's peers based on inquiry.	2. District Court Order Absent Inquiry of probable cause or confutation—fictitiously designated Civil Procedure.
3. Ordinary criminal procedure.	3. Seizure and reproduction of *all* records deemed desirable by Department of Justice.
4. Search and seizure under writ designating place and things.	4. Trial by Judge.
5. Trial by jury.	5. Civil or criminal contempt by Judge if found guilty.
6. Criminal sentence if found guilty by jury.	6. Additional criminal procedure by Department of Justice.

The framers of the Sixth Amendment did not contemplate that the powers and prerogatives of the grand jury should be farmed out to an administrative or executive functionary, who is inhibited only by his own sense of propriety. This fragmentation of the criminal process is repugnant to the express commands and protections of the Sixth Amendment.

III.

The Court Erred in Failing to Hold That the Title III Proceedings As Conducted by the District Court Did Not Constitute a "Case or Controversy" Within the Meaning of Article III, Section 2, of the Constitution of the United States.

To hold that the Attorney General's statement of the "basis and purpose" of the demand for inspection of docu-

ments must be accepted as binding and conclusive, and that, in the face of a denial by the Defendant registrars that the Attorney General did in fact have a proper "basis and purpose" for the demand, and after being offered the opportunity, the Attorney General declined to put on proof or evidence as to the basis or purpose of the demand, that the Attorney General of the United States is entitled as a matter of right to an order of the Court granting the inspection and reproduction of records in the possession of the Defendant registrars, would make of the District Courts of the United States a rubber-stamp instrument in an administrative proceeding initiated by the Attorney General of the United States.

Perhaps this is the "limited, albeit vital, role"* that it has been said that district courts should play in Title III proceedings. If it is held, however, that in this case the "limited, albeit vital, role" to be played by the district court is to blindly issue its process in aid of an administrative proceeding, without the right of exercising its power of judicial inquiry, which is concomitant to the exercise of the judicial power, then Federal jurisdiction of this cause would be destroyed, in that the jurisdiction of the United States Courts is confined by Article III, Section 2 of the Constitution of the United States to "cases or controversies".

We submit that a basic error was made by the United States District Court for the Middle District of Alabama in deciding one of the first cases brought pursuant to Title III of the Civil Rights Act of 1960. That case was *In re Dinkens*, 187 F. Supp. 844, Aff. 285 F.2d 430 (5th Cir.). In that case, the District Court drew an analogy between Title III proceedings and the proceedings of the

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*See *Kennedy v. Lynd*, (5 Cir., 1962) 306 F.2d 222, 225.

Civil Rights Commission as interpreted by this Court in the case of *Hannah* v. *Larche*, 363 U.S. 420, 4 L. Ed. 2d 1307. After quoting from the language of the Opinion of this Court in *Larche* which held that the sole function of the Civil Rights Commission was to investigate, not adjudicate, the District Court came to the following conclusion:

> "The distinction lies in the *function* being exercised. Here the function sought to be exercised by the Attorney General is—as in Hannah—purely investigative".

For the purposes of this argument, Petitioners concede that the function of the Civil Rights Commission is investigative and that the function of the Attorney General of the United States in Title III proceedings is investigative. However, we earnestly submit that the only proper function of the United States District Court in these proceedings is to *adjudicate* the rights of parties litigant, and that once the Attorney General decided to avail himself of the processes of that Court, that the duty and power of adjudicating the rights of the parties based on *findings* as to all material issues in dispute, devolved upon that Court. In short, the only proper function of the District Court in these cases is to adjudicate, not investigate or become an adjunct to an investigative process without first exercising its powers of judicial inquiry into all material disputed issues.

In *Tutun* v. *United States*, 270 U.S. 568, 70 L. Ed. 738, the United States Supreme Court dealt with the question of whether a naturalization proceeding constituted a "case or controversy" within the meaning of Article III, Section 2 of the Constitution. In deciding this case, the Supreme Court used the following pertinent language in stating some of the necessary elements of a "case or controversy":

"If the proceeding were not a case or controversy within the meaning of art. 3, §2, this delegation of power upon the courts would have been invalid.

* * *

"Whether a proceeding which results in a grant is a judicial one, does not depend upon the nature of the thing granted, but upon the nature of the proceeding which Congress has provided for securing the grant. The United States may create rights in individuals against itself, and provide only an administrative remedy. United States v. Babcock, 250 U.S. 328, 331, 63 L. Ed. 1011, 1012, 39 S. Ct. Rep. 464. It may provide a legal remedy, but make resort to the courts available only after all administrative remedies have been exhausted. Compare New Orleans v. Paine, 147 U.S. 261, 37 L. Ed. 162, 13 S. Ct. Rep. 303; United States v. Sing Tuck, 194 U.S. 161, 48 L. Ed. 917, 24 S. Ct. Rep. 621; American Steel Foundries v. Robertson, 262 U.S. 209, 67 L. Ed. 953, 43 S. Ct. Rep. 541. It may give to the individual the option of either an administrative or a legal remedy. Compare Clyde v. United States, 13 Wall. 38, 20 L. Ed. 479; Chorpening v. United States, 94 U.S. 397, 399, 24 L. Ed. 126, 127. Or it may provide only a legal remedy. Compare Turner v. United States, 248 U.S. 354, 62 L. Ed. 291, 39 S. Ct. Rep. 109. Whenever the law provides a remedy enforceable in the courts according to the regular course of legal procedure, and that remedy is pursued, there arises a case within the meaning of the Constitution, whether the subject of the litigation be property or status." (270 U.S. 576, 577, 70 L. Ed. 741, 742.)

And, in the landmark case of *Muskrat* v. *United States*, 219 U.S. 346, 55 L. Ed. 246, the Supreme Court of the United States, in discussing what constitutes a "case or controversy" stated the rule as follows:

"It therefore becomes necessary to inquire what is meant by the judicial power thus conferred by the Constitution upon this court, and, with the aid of ap-

propriate legislation, upon the inferior courts of the United States. 'Judicial power,' says Mr. Justice Miller, in his work on the Constitution, 'is the power of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision.' Miller, Const. 314.

* * *

"What, then does the Constitution mean in conferring this judicial power with the right to determine 'cases' and 'controversies.' A 'case' was defined by Mr. Chief Justice Marshall as early as the leading case of Marbury v. Madison, 1 Cranch. 137, 2 L. Ed. 60, to be a suit instituted according to the regular course of judicial procedure." (219 U.S. 356, 55 L. Ed. 250.)

A holding that the District Courts do not have the power and authority to judicially inquire into all material issues and disputes presented in Title III proceedings does not square with the language above quoted from the *Tutun* and *Muskrat* cases, *supra*, which defines the judicial power of the courts of the United States, and also defines what constitutes a "case or controversy".

Unless the "nature of the proceeding which Congress has provided for securing the grant" (*Tutun* v. *United States, supra*, 270 U.S. 576, 70 L. Ed. 741) includes and encompasses the duty and power of the courts of the United States to exercise their power of judicial inquiry into every material issue in dispute, then the proceeding is outside the scope of the judicial power of the courts of the United States as defined and delimited by Article III, Section 2 of the Constitution and the cases interpreting that Section. If the courts of the United States must blindly issue its process in aid of an administrative proceeding, then the nature of the proceeding is not judicial, but is administrative, and, it is elemental that courts of

the United States cannot be constitutionally delegated any administrative powers or functions. See *Tutun* v. *United States, supra; Federal Radio Commission* v. *General Electric Co.*, 281 U.S. 464, 74 L. Ed. 979; *Porter* v. *Investors Syndicate*, 286 U.S. 461, 76 L. Ed. 1226; and *Crowell* v. *Benson*, 285 U.S. 22, 76 L. Ed. 598.

What is "a remedy enforceable in the courts according to the regular course of legal procedure"? (*Tutun* v. *United States, supra*, 270 U.S. 577, 70 L. Ed. 741.) It is most certainly *not* a case such as the one at hand, in which after issue has been joined by way of responsive pleading on a material point, the moving party, who has the burden of making out a case, declines, after being afforded an opportunity, to put on any evidence or proof as to the controverted issue, and then is granted relief. Unless a suit is brought and prosecuted in the regular course of legal procedure, there is no case within the meaning of the Constitution, and thus, no Federal jurisdiction.

The mere fact that there are adverse parties to the action is not enough to constitute a "case or controversy" unless the other essential elements of a "case or controversy" as above discussed, are also present.

IV.

The Court Erred in Its Interpretation of Title III Proceedings by Holding That Respondent Had Met the Requirements of Proving the Jurisdiction of the United States District Court As Provided by Section 1974d, Title 42, U.S.C.

It is the contention of the Petitioners that the Respondent did not adequately state the basis and purpose of his demand for inspection of records made upon Peti-

tioners as provided by 42 U.S.C., 1974b and therefore it was error for the District Court to hold that the demand was in effect sufficient. The statutory language and the legislative history of Title III of the Civil Rights of 1960 make it plain that Congress intended for the District Courts to judicially inquire into any and all issues that were raised by the parties and the pleadings in Title III proceedings.

Reference is here made to Report No. 956 of the House of Representatives, 86th Congress, First Session, which report accompanied H.R. 8601, which was the Civil Rights Act of 1960, at page 7:

> "Section 306 provides that in the event of non production, jurisdiction would be conferred upon the Federal district courts to resolve *any* dispute which might arise in connection with the exercise of the authority conferred upon the Attorney General by this title including appropriate process to compel the production of the record or paper."

See also testimony of Honorable Lawrence E. Walsh, Deputy Attorney General of the United States, one of the chief sponsors of the Civil Rights Act of 1960 at *hearings before the Committee on the Judiciary, United States Senate, 86th Congress, Second Session*, on H.R. 8601, held on March 28 and 29, 1960, at page 9 thereof, as follows:

> "In the event of nonproduction, jurisdiction is conferred upon the Federal District Courts to resolve *any* dispute which might arise in connection with the exercise of the authority conferred."

It is clear from the foregoing language used by Judge Walsh, as a proponent of the proposed legislation, that the office of the Attorney General recognized that the district courts should have complete authority to make the necessary judicial inquiry which would settle any and all

disputes, and that any limitation of this authority would be contrary to the legislative intent and purpose of Congress in the enactment of the Civil Rights Act of 1960.

One of the disputes which it was contemplated should be resolved by the District Courts was the question of whether the Attorney General of the United States had sufficiently stated the basis and purpose of the demand as contemplated by 42 U.S.C., Section 1974b. By way of answer, Petitioners here put in issue the question of whether the Attorney General of the United States in fact had adequately and sufficiently stated the basis and purpose of the demands, and specifically denied that the Attorney General had in his possession any information tending to show that distinctions based upon race or color had been committed by any of the Petitioners. This denial certainly placed this issue in the category of a "dispute", which the District Court should have resolved.

Instead of resolving this dispute by the traditional means of hearing testimony and receiving other evidence, the District Court, after Respondent had been given an opportunity to present evidence and had declined to do so, granted the inspection orders. In so doing, the District Court held in effect that the issue before it was one that could not be resolved in the District Courts, but that the statement of the "basis and purpose" of the demand made by the Attorney General must be accepted as conclusive and binding on all parties and as sufficient to meet the statutory requirements. In this, the District Court was clearly wrong, and its action flies in the face of the plain meaning of Title III of the Civil Rights Act of 1960 and the legislative history of Title III.

In addition to the foregoing contention wherein we state that the Respondent failed to state an adequate basis or purpose of the demand, we would further submit and

argue that the Respondent is authorized to demand and the Petitioners are obliged, under the Act, to make available *only* those records which the Petitioners are required to preserve under Title 42, U.S.C., §1974 and, additionally, that jurisdiction of the District Court, Title 42, U. S. C., §1971d, is made to depend upon a demand made in pursuance to Title 42, U.S.C., § 1974b.

The Petitioners would show that the demand, petition and order of the District Court went beyond the authority granted in the Act.

Title III of the Civil Rights Act of 1960 makes it very clear that a proper demand, stating the basis and purpose of the demand, is essential and prerequisite to jurisdiction and the right of the Attorney General to invoke jurisdiction of the District Court. Section 1974b of Title 42, U.S.C., provides that "*any* record or paper *required by §1974 of this Title to be retained and preserved* shall, upon demand in writing by the Attorney General or his representative directed to the *person* having custody, possession, or control of such record or paper, be made available for inspection, reproduction and copying at the principal office of such custodian by the Attorney General or his representative. The demand shall contain a statement of the basis and the purpose therefor."

Section 1974 of Title 42, U.S.C., requires every officer of election, as defined in the Act, to retain and preserve *for a period of twenty-two months* "from the date of any general, special, or primary election of which candidates for the office of President, Vice-President, presidential elector, Member of the Senate, Member of the House of Representatives, or President Commissioner from the commonwealth of Puerto Rico are voted for, *all* records and papers which come into his possession relating to any ap-

plication, registration, payment of poll tax, or other act requisite to voting in such election." Following the quoted part the Act makes exception where records are turned over to another officer of election under legal provisions therefor and, in the same section, provides for wilful failure to comply with the requirement a penalty or fine not exceeding $1,000 and imprisonment not exceeding one year, or both.

It is to be noted that Section 1974, Title 42, U.S.C., requires the preservation of *all records in the named category*, whereas in Section 1974b, Title 42, U.S.C., the demand is limited to *any* record or paper *so required to be preserved.*

It seems clear that the use of the word *all*, the plural, in Section 1974 and the use of the word *any* in Section 1974b is significant. The significance is disclosed by pragmatic consideration of how the matter has worked out in actual experience under court interpretation that *any* in Section 1974b, is synonymous with *all* in Section 1974 of Title 42, U.S.C.

The Attorney General, the Respondent herein, has proceeded with great fanfare from county to county, throughout the State of Mississippi, making demands for "*all* records and papers in your custody" relating to any act requisite to voting in elections and Primaries in which Federal offices, as listed in the Act, are voted for. Generally, and in this case, the time limit for preservation of the stated records, which is twenty-two months after Federal elections, is not mentioned in the demand. The order of the District Court directed the Petitioners to make available for inspection, reproduction and copying, *all* records in their possession relating to any act requisite to voting "in primary, special or general elections in Mis-

sissippi" without reference to the limitation to the elections only where Federal officers are voted for, or the twenty-two months preservation period. The demand is for more than the law requires.

According to the law as construed in this case, the Attorney General may proceed in any manner he chooses, with or without any investigation of the background or factual situation; with or without any reason, political, personal, intimidation, with good motive or bad motive, to interrupt, disrupt, embarrass and disorganize Petitioners' offices and requiring of them far more than the Act intended. In fact he may engage in a grand "fishing expedition" and Petitioners submit that this is exactly what the Respondent has done.

Section 1974b of Title 42, U.S.C., provides that "the United States District Court for the district in which a demand is made *pursuant* to Section 1974b of this Title, or in which a record of papers *so demanded* is located, shall have jurisdiction by appropriate process to compel the production of such record or paper".

This section, as is clearly seen, not only fixes the venue of the particular district court, but also declares the terms upon which jurisdiction may be invoked. Here, again, the words are significant. The "demand" must be a demand *pursuant* to Section 1974b of the Act. Note that Section 1974b requires the custodian to make available not *all* records required to be preserved but *any* record or paper required by Section 1974 to be preserved. The term *any* record implicitly requires an explicit designation of the record and not *all* records "relating to". It is apparent from a reading of Section 1974b, Title 42, U.S.C., that the record or records demanded must be specifically designated in order for the demand to comply with the provisions of the statute.

Section 1974d, Title 42, U.S.C., refers to "*a* record or paper *so* demanded", again indicating the singular and limiting the jurisdiction to demands made pursuant to Section 1974b, Title 42, U.S.C. And in the last line of Section 1974d, the term *such record* or paper again implies the singular.

From a careful reading of Section 1974d in the light of the above observations, it clearly appears that jurisdiction is limited to cases where (1) "a demand is made *pursuant* to Section 1974b" or in which "a record or paper *so* demanded is located".

Since the record in the case at bar clearly shows that the Respondent did not follow requisite procedure to establish jurisdiction and the order of the District Court granting inspection of the records in the custody of the Petitioners shows on its face that more is required of Petitioners than the law, itself, requires, we submit that the Petition for Writ of Certiorari should be granted for a review by this Court.

V.

The Court Erred in Its Interpretation of Title III Proceedings by Holding That Respondent Was Entitled to Inspect, Copy and Reproduce Documents in the Custody of Petitioners Which Came in Existence Prior to May 6, 1960, the Effective Date of the Civil Rights Act of 1960.

Title III of the Civil Rights Act of 1960 can only be given a prospective, and not a retrospective, effect because the Act is substantive in nature; and it is a rule of law that although remedial statutes may be given a retrospective or retroactive effect, as well as a prospective effect, that substantive statutes or amendments of statutes

can only be given a prospective effect. At 82 C.J.S., pages 918-919, Statutes, Section 388, the following language is found:

> "While remedial statutes are those which do not create, enlarge, diminish, or destroy vested rights, a remedial statute is designed to correct an existing law, redress an existing grievance, or introduce regulations conducive to the public good, and a law is entitled to be considered as remedial whether it remedies a defect of the common law or of a pre-existing statute."

And, at 82 C.J.S., page 921, Statutes, Section 388, the following language is found:

> "A statute prescribing a new right and a particular remedy must be strictly construed, and the manner provided in the statute whereby the right may be acquired must be strictly followed."

It is clear that Title III is substantive in nature, and that, therefore, it should be given a prospective, not retrospective, effect. Title III imposes a new duty upon registrars of voters to preserve all voting records for twenty-two months and provides criminal sanctions against any registrar who wilfully fails to do so and against any other person who wilfully destroys or mutilates any of said voting records required to be preserved. That portion of Title III which requires a voting registrar to preserve voting records for twenty-two months is substantive in nature because an additional duty and liability with criminal sanctions is imposed upon said registrars by the provision of this section. In addition, Title III purports to vest the Attorney General of the United States with a new right and power which he did not possess prior to the passage of that Act, namely, the right and power, upon demand, to obtain inspection of certain voting records.

As for the criminal sanctions provided to be used against the voting registrars and individual citizens, it is obvious that this provision is penal in nature and must be construed to be only prospective in operation and effect.

It was held in *United States* v. *Mashburn*, (U.S.D.C., W.D. Ark., 1949) 85 F. Supp. 968, 969, that the rule of construction that a statute is intended to operate only prospectively applies with even greater force when a retroactive operation would create a new liability or affect an existing liability to the disadvantage or detriment of a defendant. Before May 6, 1960, the registrars of voters were under no duty to preserve voting records, and legislation which took effect on that date could not create a duty or obligation on said registrars to retain any records which came into being prior to that date.

Having demonstrated, we trust, that Title III of the Civil Rights Act of 1960 is substantive, not remedial, in operation and effect, we will now proceed to substantiate our contention that substantive statutes can only apply prospectively, and not retrospectively or retroactively.

In *Pan American Petroleum Company* v. *Gibbons*, (10 Cir. 1958) 262 F.2d 852, the United States Court of Appeals for the Tenth Circuit used the following language:

> "Of course, Acts of Congress in many instances may constitutionally have retroactive effect, but substantive statutes will not be construed to operate retroactively unless that intention has been manifested by clear and unequivocal expression."

It is appropriate to note here that Title III contains no expression of congressional intent that it should apply retroactively or retrospectively, or in any other manner except prospectively.

And in *Shwab* v. *Doyle*, 258 U.S. 529, 66 L. Ed. 747, this Court used the following language in its opinion:

> "The initial admonition is that laws are not to be considered as applying to cases which arose before their passage unless that intention be clearly declared."
>
> * * *
>
> "There is absolute prohibition against them when their purpose is punitive; they then being denominated ex post facto laws. It is the sense of a situation that that which impels prohibition in such cases exacts clearness of declaration when burdens are imposed upon completed and remote transactions, or consequences given to them of which there could have been no foresight or contemplation when they were designed and consummated." 258 U.S. 534, 66 L. Ed. 752.

In *Fisher* v. *Home Indemnity Co.*, (5 Cir. 1952) 198 F.2d 218, 222, the Court held that statutes, unless plainly indicating the contrary, are to be construed prospectively, especially where substantive rights are involved. In *Highway Truck Drivers and Helpers Local 107* v. *Cohen*, (U.S.D.C., E.D. Pa., 1960) 182 F. Supp. 608, 611-612, Aff. 284 F.2d 162, the District Court said:

> "Aside from the fact that the plaintiffs have not attempted to meet this contention, the principle that a statute which creates a new substantive right or duty will not, in the absence of clear legislative intent to the contrary, be construed to apply retrospectively, is too well established to admit of argument. Brewster v. Gage, 1930, 280 U.S. 327, 50 S. Ct. 115, 74 L. Ed. 457; Miller v. United States, 1935, 294 U.S. 435, 55 S. Ct. 440, 79 L. Ed. 977; Home Indemnity Co. v. State of Missouri, 8 Cir., 1935, 78 F.2d 391; Peony Park, Inc., v. O'Malley, 8 Cir., 1955, 223 F.2d 668."

As noted above, Title III of the Civil Rights Act of 1960 vests a new power or right in the Attorney General of the United States, and the Act also imposes a new burden or duty on the various registrars of voters, and for these reasons must be construed to be substantive and not remedial, and thus to be prospective, and not retrospective or retroactive in operation and effect. *United States* v. *Vadio*, (D.C. Mich., 1956) 136 F. Supp. 423, holds that there is a presumption that statutes promulgating substantive law are to be construed as applied prospectively unless a contrary intent is manifested in clear and unambiguous terms. As before stated, there is no such expression of intent contained in Title III.

For the above reasons, it is submitted that Title III of the Civil Rights Act of 1960, if valid, is prospective and not retrospective or retroactive in operation and effect, and that the District Court and the Court of Appeals erred in not limiting the inspection to those records which came into being after May 6, 1960.

CONCLUSION

Petitioners pray that a Writ of Certiorari issue to review the judgment and order of the United States Court of Appeals for the Fifth Circuit and that upon the granting of such writ that said judgment and order be reversed and that this cause be remanded to said Court of Appeals or to the United States District Court for the Southern District of Mississippi for the entry of such

orders or for the conduct of such further proceedings as this Court may deem proper in the premises.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, JOE T. PATTERSON, Attorney General of the State of Mississippi, one of the attorneys for Petitioners herein and a member of the bar of the Supreme Court of the United States, hereby certify that on the date shown below I served the foregoing PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT on Robert F. Kennedy, Attorney General of the United States, Respondent, by mailing, postpage prepaid, true copies thereof to: Honorable Robert E. Hauberg, United States Attorney, Federal Building, Jackson, Mississippi; Honorable Burke Marshall, Assistant Attorney General, Department of Justice, Washington 25, D. C.; Honorable John Doar, Attorney, Department of Justice, Washington 25, D. C.; and Honorable Gordon A. Martin, Jr., Attorney, Department of Justice, Washington 25, D. C.

DATED this 17th day of April, 1963.

JOE T. PATTERSON,
Attorney General of the State of Mississippi,
Attorney for All Petitioners

Address: New Capitol Building,
Jackson, Mississippi.

APPENDIX

The Constitution of the United States

Article III, §2, Clause 1:

> Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an

impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment X:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

United States Code

Title 18:

§242. Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§1254. **Courts of appeals, certiorari; appeal; certified questions.**

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

§2101. **Supreme Court; time for appeal or certiorari; docketing; stay.**

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

Title 42:

§1974. Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice-President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner for the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§1974a. Any person, whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by section 1974 of this title to be retained and

preserved shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§1974b. Any record or paper required by section 1974 of this title to be retained and preserved shall, upon demand in writing by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying at the principal office of such custodian by the Attorney General or his representative. This demand shall contain a statement of the basis and the purpose therefor.

§1974c. Unless otherwise ordered by a court of the United States, neither the Attorney General nor any employee of the Department of Justice, nor any other representative of the Attorney General, shall disclose any record or paper produced pursuant to this subchapter, or any reproduction or copy, except to Congress and any committee thereof, governmental agencies, and in the presentation of any case or proceeding before any court or grand jury.

§1974d. The United States district court for the district in which a demand is made pursuant to section 1974b of this title, or in which a record or paper so demanded is located shall have jurisdiction by appropriate process to compel the production of such record or paper.

§1974e. As used in this subchapter, the term "officer of election" means any person who, under color of any Federal, State, Commonwealth, or local law, statute, ordinance, regulation, authority, custom, or usage, performs or is authorized to perform any function, duty, or task in connection with any application, registration, payment of poll tax, or other act requisite to voting in any general, special, or primary election at which votes are cast for candidates for the office of President, Vice President, presidential

elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico.

Mississippi Code of 1942, Annotated.

§2111. If any registrar appointed by law to register votes, shall intentionally refuse or neglect to register any voter entitled to registration, or register any voter not entitled to registration, he shall be punished, on conviction, by imprisonment in the penitentiary not less than one year nor more than three years.

Opinion of United States District Court for the Southern District of Mississippi.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

In re Preston P. Coleman, Circuit Clerk and Registrar of Lauderdale County, Mississippi.	Civil Action No. 1117 (Eastern Division)
In re L. F. Campbell, Circuit Clerk and Registrar of Madison County, Mississippi.	Civil Action No. 3288 (Jackson Division)
In re H. T. Ashford, Jr., Circuit Clerk and Registrar of Hinds County, Mississippi.	Civil Action No. 3308 (Jackson Division)

These three separate applications were filed in this Court against these registrars under Title III of the 1960 Civil Rights Act of the United States for the inspection of their registration and voting records in their respective counties in Mississippi. The substantial identity of questions involved entailed a consolidation of these cases for trial.

The Attorney General of the United States handed these county registrars a demand in writing for them to make available to him within fifteen days official records in their possession for inspection and copying in accordance with 42 U.S.C.A., §1974(b). The letter demand in part stated. "This demand is based upon information in the possession of the Attorney General tending to show that discriminations on the basis of race and color have been made with respect to registration and voting within your jurisdiction. The purpose of this demand is to examine the aforesaid records in order to ascertain whether or not

violations of Federal law in regard to registration and voting have occurred." The demand in each instance was refused, thereby precipitating these actions under 42 U.S.C.A., §1974(b).

The Attorney General thereupon filed his ex parte application for an order of the Court to require the production of such records for inspection and copying. The application stated that the demand was made for such records in accordance with §1974(b) and a copy of such demand was annexed thereto in each instance as Exhibit "A". The application cited the refusal of the registrar through his attorney to permit such inspection. It was averred that the registrar in his official capacity has the custody, possession and control of the records and papers requested, and more than fifteen days had elapsed after the presentation of such demand and that the registrar had refused to make said records and papers available to him.

The registrars answered the application as a plenary suit. The official capacity of the applicant was not denied. It was not denied that he had such official records in his possession and under his control. It was not denied that the Attorney General wanted to examine such records in the Federal field to see if any Federal laws were violated. The last sentence in §1974(b), supra, referring to the demand which was served on the registrar, provides: "This demand shall contain a statement of the basis and purpose therefor." The respondents say that the demand did not contain a statement of the basis but stated only the purpose therefor. Both sides declined to offer any evidence or testimony. The applicant requested the order without any proof and the respondent contended that without proof that he was entitled to a judgment because he had expressly denied that there was in fact any basis for such inspection within the statutory scheme.

The United States Court of Appeals for the Fifth Circuit has settled all questions in this case in *Robert F. Kennedy, Attorney General of the United States* v. *Theron C. Lynd, Registrar of Elections of Forrest County*, No. 19636, decided 7-11-62; *U. S.* v. *Theron C. Lynd*, 301 F.(2) 818; *Crum Dinkins* v. *The Attorney General of Alabama*, 285 F.(2) 430; *Kennedy* v. *Bruce*, 298 F.(2) 860. The respondents contend that each case cited is replete with dicta, in that the particular point in this case was not actually before the Court in either of those cases. That contention seems well founded, but whether said opinions are controlling or not does not solve the problem. In the absence of some more impelling and persuasive authority, to the contrary, those cases from this circuit are persuasive.

Significantly, the respondents do not claim that any record sought will incriminate them in any way; or subject them to any penalty, or that its contents when revealed will even embarrass them. On the contrary, the respondents say that such records were properly kept and that they never discriminated against anybody, and presumably the records will so show. It is not claimed that these official records are privileged, or exempt from discovery for any sound reason of public policy. It is not contended that an inspection of these records would be oppressive, or any unlawful invasion of any personal constitutional right of any respondent; or that it would work any hardship on either of them, but such inspection was refused because the Attorney General did not divulge the source of his information as to alleged discriminations and did not reveal whether or not his source was reliable and real, and not false.

The subject matter of this controversy is official records and not private property of any one. The

Congress has said that such records *shall* be made available to the Attorney General upon his demand therefor. He is the chief law enforcement officer of the nation. He desires to ascertain himself whether or not any violation of Federal law has occurred as reflected by these records in connection with the registration and voting of Negroes. He is officially concerned with the discharge of his duty and responsibility as a national officer in seeing whether or not such laws have been violated in the Federal field. He is presumed to be acting in good faith and in the proper pursuit of his official duties unless otherwise shown.

The right of inspection of official records exists at common-law subject to limitations not present here. There is no United States common law but the respondents are subject to the rules of the common-law in Mississippi, except as restricted by statute. The right of free examination of official records is the rule, and the inhibition of such privileges, when the purpose is speculative, or from idle curiosity, is the exception. Under the Federal rules, it is no longer a defense, that an interrogatory or an examination may be a fishing expedition. The form or style of the action is unimportant. The procedure devised by this scant enactment is summary in nature. It is not administrative but presents a justiciable controversy which affords a respondent adequate safeguard for his protection and proper defense. It is unimportant as to the identity of the applicant's informants, or whether or not he had any informants. There need be nothing wrong with the registrar's books to entitle a party in interest in good faith to make an inspection and take a copy thereof. The answer simply states no defense to the application, and the posture of the suit is the same as would be a case on a promissory note with a general issue plea interposed thereto. Such a plaintiff would be entitled to a judgment as a matter of law in spite of a general denial of

every affirmative averment in a complaint based on such note.

This application is merely a pure bill for discovery and seeking no other relief. No constitutional rights of the respondents are invaded or violated, and it is unnecessary to pass on the constitutionality of the act whether its constitutionality has been approved or not.

The applicant is entitled to an order for the inspection of such official records of these registrars, without any undue interference with their daily work and use of such records, from day to day, continuously, until completed during business hours and as quickly as reasonably possible. All pending motions will be overruled. Separate orders may be presented for entry in these cases on the same form used in the Lynd case. An order of consolidation of these cases may be likewise presented.

This September 8, A. D., 1962.

/s Harold Cox,

United States District Judge.

Opinion of the United States Court of Appeals for the Fifth Circuit.

IN THE

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20102

Preston P. Coleman, Circuit Clerk and Registrar of Lauderdale County, Mississippi, Et Al., Appellants,

versus

Robert F. Kennedy, Attorney General of the United States, Appellee.

Appeals from the United States District Court for the Southern District of Mississippi.

(February 13, 1963)

Before Rives and Wisdom, Circuit Judges and Bootle, District Judge.

PER CURIAM: In an able opinion compelling production pursuant to the application of the Attorney General for inspection of the registration and voting records in the custody of the Registrars of Lauderdale, Madison, and Hinds Counties, Mississippi, the district court correctly observed:

> "The United States Court of Appeals for the Fifth Circuit has settled all questions in this case in Kennedy, Attorney General of the United States v. Lynd, Registrar of Elections of Forrest County, 5 Cir., 306 F.2d 222; U. S. v. Lynd, 5 Cir., 301 F.2d 818; Dinkins v. Attorney General of U. S., 5 Cir., 285 F.2d 430; Kennedy v. Bruce, 5 Cir., 298 F.2d 860."

In re Coleman, S.D. Miss., 1962, 208 F. Supp. 199, 200.

Our construction in *Kennedy* v. *Lynd*, *supra*, 306 F.2d at 226, of the requirement of 42 U.S.C.A. §1974(b) that the demand for voting records "contains a statement of the basis and the purpose therefor" is supported by legislative history. Without collecting or citing more of that history, we quote from Senator Keating, one of the principal spokesmen for the bill in the Senate (106 Cong. Rec. 7767):

> "The language added by the House Judiciary Committee in section 303 that the Attorney General's demand 'contain a statement of the basis and the purpose therefor' means only that the Attorney General identify in a general way the reasons for his demand. Clearly a sufficient statement would be the assertion that the demand was made for the purpose of investigating possible violations of a Federal statute. No showing even of a prima facie case of a violation of Federal law need be made. Mr. President, I believe that a majority of the Senate shares my understanding of the meaning of these provisions, but I thought it was important to make the record on this point abundantly clear."

The present appeals are totally without merit, and the judgments are

AFFIRMED.

Judgment of the Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1963

No. 20102

D. C. Docket Nos. 1117, 3286 and 3308 Civil Action
Preston P. Coleman, Circuit Clerk and Registrar of Lauderdale County, Mississippi, et al.,
Appellants.

versus

Robert F. Kennedy, Attorney General of the United States,
Appellee.

Appeals from the United States District Court for the Southern District of Mississippi.

Before Rives and Wisdom, Circuit Judges, and Bootle, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Mississippi, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgments of the said District Court in this cause be, and the same are hereby, affirmed.

February 13, 1963

Issued as Mandate:

Denial of Petition for Rehearing.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20102

Preston P. Coleman, Circuit Clerk and Registrar of Lauderdale County, Mississippi, et al.,
Appellants.

versus

Robert F. Kennedy, Attorney General of the United States,
Appellee.

Appeals from the United States District Court for the Southern District of Mississippi.

(March 15, 1963)

ON PETITION FOR REHEARING

Before Rives and Wisdom, Circuit Judges, and Bootle, District Judge.

Per Curiam:

The petition for rehearing in the above-styled and numbered cause is hereby

DENIED.

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 1034

PRESTON P. COLEMAN, CIRCUIT CLERK AND REGISTRAR OF LAUDERDALE COUNTY, MISSISSIPPI, ET AL., PETITIONERS

v.

ROBERT F. KENNEDY, AS ATTORNEY GENERAL OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the district court (R. 26) is reported at 208 F. Supp. 199. The opinion of the court of appeals (R. 469) is reported at 313 F. 2d 867.

JURISDICTION

The judgment of the court of appeals was entered on February 13, 1963 (R. 472), and petitioners' motion for rehearing was denied on March 15, 1963 (R. 505). The petition for a writ of certiorari was filed on April

19, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a proceeding to determine whether the Attorney General is entitled to the production of voting records under the Civil Rights Act of 1960 is a case or controversy within the meaning of Article III of the Constitution.

2. Whether the order of the district court, requiring petitioners to produce voting records under the Civil Rights Act of 1960 without providing them with the specific information underlying the Attorney General's demand for the records and without allowing them to cross-examine any persons who might have given the Attorney General this information deprived them of due process or the right to confrontation under the Fifth or Sixth Amendments to the Constitution.

3. Whether the district court erred in holding that the Attorney General's demand for voting records complied with the requirements of the Civil Rights Act of 1960.

STATUTE INVOLVED

Title III of the Civil Rights Act of 1960 (74 Stat. 88, *et seq.*, 42 U.S.C. (Supp. II) 1974, *et seq.*) provides:

> SEC. 301. —Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the

Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more then $1,000 or imprisoned not more than one year, or both.

SEC. 302. —Any person, whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by section 301 to be retained and preserved shall be fined not more than $1,000 or imprisoned not more than one year, or both.

SEC. 303. —Any record or paper required by section 301 to be retained and preserved shall, upon demand in writing by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying at the principal office of such custodian by the Attorney General or his representa-

tive. This demand shall contain a statement of the basis and the purpose therefor.

SEC. 304. —Unless otherwise ordered by a court of the United States, neither the Attorney General nor any employee of the Department of Justice, nor any other representative of the Attorney General, shall disclose any record or paper produced pursuant to this title, or any reproduction or copy, except to Congress and any committee thereof, governmental agencies, and in the presentation of any case or proceeding before any court or grand jury.

SEC. 305. —The United States district court for the district in which a demand is made pursuant to section 303, or in which a record or paper so demanded is located, shall have jurisdiction by appropriate process to compel the production of such record or paper.

SEC. 306. —As used in this title, the term "officer of election" means any person who, under color of any Federal, State, Commonwealth, or local law, statute, ordinance, regulation, authority, custom, or usage, performs or is authorized to perform any function, duty, or task in connection with any application, registration, payment of poll tax, or other act requisite to voting in any general, special, or primary election at which votes are cast for candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico.

STATEMENT

The Attorney General, through his authorized agents, demanded of petitioners Coleman, Campbell, and Ashford (on February 27, 1962, April 30, 1962, and July 2, 1962, respectively), pursuant to Title III of the Civil Rights Act of 1960, that they make available for inspection and copying their registration and voting records relating to election for federal office (R. 4, 142, 281). These demands were refused (R. 13-14, 158, 329). Accordingly, the Attorney General filed in the District Court for the Southern District of Mississippi, applications for orders, pursuant to Section 305 of the Act (42 U.S.C. (Supp. II) 1974(d)) requiring the production of records for inspection, reproduction, and copying (R. 1, 140, 278). A hearing was held on September 5, 1962 (R. 47), and on September 8, 1962, the district court rendered an opinion upholding the Attorney General's right to the requested inspection order (R. 27).

On September 11, 1962, the court entered orders in accordance with its opinion of September 8, 1962 (R. 32, 163, 335), requiring that the voting records be made available for inspection and copying, commencing on September 17, September 20, and September 25, 1962 (R. 34, 164, 336). On September 14, 1962, the district court granted stays of its orders pending appeal (R. 37, 168, 339). On November 16, 1962, the court of appeals vacated the district court's stay (R. 446). On January 8, 1963, however, the court of appeals entered an order staying the execution of its order of November 16, 1962, and setting the appeals for hearing on the merits (R. 466).

On February 13, 1963, the court of appeals rendered its opinion which concluded that "[t]he present appeals are totally without merit, and the judgments are affirmed" (R. 471; 313 F. 2d at 868). On March 15, 1963, it denied a petition for rehearing (R. 505). On March 21, 1963, Judge Rives entered an order staying the execution and enforcement of the inspection orders of the district court and of the judgment and mandate of the court of appeals for a period of 30 days to permit the filing of a petition for certiorari with this Court, the stay to continue in force until the final disposition of the case by this Court.

ARGUMENT

This case illustrates a serious and continuing problem which has arisen in enforcing Title III of the Civil Rights Act of 1960. That Title was intended to provide the Attorney General with a simple and expeditious procedure for obtaining registration and voting records. H. Rep. No. 956, 86th Cong., 1st Sess., p. 7; *Kennedy* v. *Lynd*, 306 F. 2d 222 (C.A. 5), certiorari denied, 371 U.S. 952. Nonetheless, repeated stays have been granted in this case; as a result, for approximately a year, the Attorney General has been prevented from obtaining the voting records and proceeding with the investigation. The stays were granted even though, as we show below, all of the questions presented by petitioners have been disposed of by court of appeals' decisions which this Court has declined to review. Developments in subsequent cases suggest that this will be a continuing pattern.

In these circumstances and in order to remove any

doubt concerning the validity of enforcement proceedings under Title III of the Civil Rights Act of 1960, we suggest that certiorari be granted and the judgment below summarily affirmed. In an analogous situation, involving the scope of relief under the Civil Rights Act of 1957, a similar disposition was ordered by the Court. See *United States* v. *Alabama*, 192 F. Supp. 677 (M. D. Ala.), affirmed, 304 F. 2d 583 (C.A. 5), affirmed, 371 U.S. 37. In the alternative, we propose that the petition for a writ of certiorari be denied.

1. Petitioners contend (Pet. 22-27) that a district court proceeding to enforce the Attorney General's demand for voting records pursuant to the Civil Rights Act of 1960 is not a "case or controversy" within the meaning of Article III of the Constitution. This claim is clearly without merit. As the court of appeals held in *Kennedy* v. *Lynd*, *supra*, 306 F. 2d at 225:

> There are adversaries—the Attorney General seeking an order against the objecting State official as custodian. § 1974b. The dispute is real and present as the application seeks "appropriate process," § 1974d, in order "to compel the production" of records or papers demanded by the Attorney General in writing. § 1974b. That by its terms and operation, Title III narrowly circumscribes the issues upon which the Court is to act does not make the proceeding or that determination any less judicial.

2. Petitioners also argue (Pet. 10-22) that they were denied due process and the right to confrontation under the Fifth and Sixth Amendments because they were not

given access to the information in the Attorney General's possession which constituted the basis of his inspection demand (Pet. 12) and were not afforded the right of confrontation and cross-examination of the persons who gave the Attorney General this information (Pet. 19-20). Petitioners reason (Pet. 13-14, 19-20) that the very demands by the Attorney General damaged their reputation and the information sought will be used to determine whether they have have committed a criminal offense.

These contentions are without merit for three reasons. First, the records involved are not the registrars' —they are the State's. Accordingly, the registrars may not object to the surrender of these records on grounds which relate to themselves. See *Wilson* v. *United States*, 221 U.S. 361, 380; *United States* v. *White*, 322 U.S. 694. While, as representatives of the State, they may raise any objections the State may have, the State is not endangered by loss of reputation or criminal prosecution.

Second, the materials ordered to be produced are records pertaining to federal elections. Therefore, the State's right *vis-à-vis* the federal government is extremely limited. Surely, the United States has the bare right to inspect and copy these official records pursuant to statutory authorization without a full trial of the need for the records.

Third, this Court rejected a similar contention in *Hannah* v. *Larche*, 363 U.S. 420. In that case, the Civil Rights Commission was attempting to compel the testimony of witnesses, whereas here the Attorney General sought only the inspection and copying of records.

As the Court held, the due process clause does not require that in an investigation, as opposed to an adjudicatory proceeding, persons under investigation be informed of the identity of the complainants or given the right to cross-examine them. *Id.* at 440, 453. The Court further observed that the Sixth Amendment "is specifically limited to 'criminal prosecutions' * * *." *Id.* at 440, note 16. Similarly here, the inspection and copying of records by the Attorney General is part of an investigation, not a criminal prosecution or adjudication. Indeed, the Attorney General has no power to adjudicate; he may merely initiate a lawsuit.[1] See *Kennedy* v. *Lynd*, *supra*, 306 F. 2d at 225, 228; *Alabama ex rel. Gallion* v. *Rogers*, 187 F. Supp. 848, 854 (M.D. Ala.), affirmed *sub. nom. Dinkens* v. *Attorney General*, 285 F. 2d 430 (C.A. 5), certiorari denied, 366 U.S. 913.[2]

3. Petitioners' contentions (Pet. 27-37) that Title III of the Civil Rights Act of 1960 has been misapplied are plainly without merit.

First, petitioners argue that the Attorney General's demand for records did not adequately state its basis

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[1] This position is in no way inconsistent with our argument that the proceeding in the district court is adjudicatory and therefore is a "case or controversy." The district court was required to adjudicate whether the Attorney General was entitled to production of the records.

[2] *Joint Anti-Fascist Committee* v. *McGrath*, 341 U.S. 123, which is relied upon by petitioners (Pet. 9-13, 15), is entirely inapposite. That case involved, as this Court stated in *Hannah* v. *Larche*, *supra*, 363 U.S. at 451, "determinations in the nature of adjudications affecting legal rights." In contrast, the order of the district court below was merely that petitioners produce voting records for inspection and copying.

and purpose, and was too broad in requiring the production of all records in their possession relating to any application or other act requisite to voting. The demand letters to the registrars expressly stated (R. 5, 143, 282):

> This demand is based upon information in the possession of the Attorney General tending to show that distinctions on the basis of race or color have been made with respect to registration and voting within your jurisdiction.
>
> The purpose of this demand is to examine the aforesaid records in order to ascertain whether or not violations of Federal law in regard to registration and voting have occurred.

Considering the summary nature of enforcement proceedings under Title III, these allegations were plainly sufficient. They state, in general terms, the basis and purpose of the Attorney General's demand. Senator Keating, a principal spokesman for the Act, explicitly said on the floor of Congress that such a statement is sufficient. 106 Cong. Rec. 7767. As to the scope of the demand, the letters ask for production of precisely those records which Sections 301 and 303 of the Act, *supra*, pp. 2-3, give the Attorney General the right to request.[3] There is nothing in the statute to indicate

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[3] The demand did not specifically limit the records to be produced to those pertaining to elections within the last 22 months as Sections 301 and 303 of the Act require. However, the demand and the district court's order clearly were meant to apply only to such records. It should be noted that a record may relate to voting in an election

that the Attorney General is required to identify with greater specificity the individual records to be produced. Such a rule would seriously hamper the Attorney General's investigation of deprivation of voting rights under the Act by requiring him to obtain and disclose detailed information before he could utilize the Act's investigatory procedures. Identical letters have been held to be sufficient in *Kennedy* v. *Bruce*, 298 F. 2d 860, 863 (C.A. 5); *United States* v. *Lynd*, 301 F. 2d 818, 822 (C.A. 5), certiorari denied, 371 U.S. 893; *Kennedy* v. *Lynd*, *supra*, 306 F. 2d at 226, and *Alabama ex rel. Gallion* v. *Rogers*, *supra*, 187 F. Supp. at 855.

Second, petitioners contend that the lower courts erred in granting the Attorney General permission to inspect records that came into existence prior to May 6, 1960, the effective date of the Civil Rights Act of 1960. Registrars admittedly cannot be held liable under Title III for any acts committed prior to the passage of the Civil Rights Act; therefore they cannot be punished for failing, prior to May 6, 1960, to preserve records. Since, however, it is well settled that a statute normally speaks from the time of its enactment (*De Lima* v. *Bidwell*, 182 U.S. 1, 197), the obligation to retain records became effective the day the Act was passed and, consequently, registrars were then required to retain for the future whatever records were then in their possession. Thus, in *Alabama ex rel. Gallion* v. *Rogers*, Judge Johnson held that records must be retained for a period of twenty-two months from the date of any of the

within 22 months of the demand even though it came into the possession of the registrar many years before—for example, when a State has permanent registration. *Kennedy* v. *Lynd*, *supra*, 306 F. 2d at 227.

specified elections "[r]egardless of when these records came into the possession of the election official." 187 F. Supp. at 855. Any other construction of the statute would undermine its effectiveness by preventing the Attorney General from obtaining many records which came into the possession of registrars before 1960 and continue to have a direct bearing upon current elections.

CONCLUSION

For the foregoing reasons, it is suggested that the petition for a writ of certiorari should be granted and the decision below summarily affirmed. If summary affirmance be judged inappropriate, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1963.

☆ U. S. GOVERNMENT PRINTING OFFICE 1963 686826 3172